IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1506 of 2016 (O&M)
Date of decision: 22.02.2018

Manisha and others ... Appellants

Versus

Kanhaiya and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Surender Pal, Advocate for the appellants.

Mr. M.B. Jain, Advocate for the insurance company.

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<u>REKHA MITTAL, J. (Oral)</u>

CM No.5279-CII of 2016

Heard.

Counsel for the insurance company has opposed condonation of huge delay of 1485 days in filing the appeal.

Counsel for the claimants would urge that provisions of Motor Vehicles Act, 1988 dealing with compensation are benevolent social legislation, therefore, meritorious claim should not be rejected on technical consideration. Further submitted that the claimants are ready to forgo interest of the period of delay in case compensation is enhanced.

In view of the above, I am satisfied that delay is required to be condoned and ordered accordingly. However, the claimants shall not be entitled to interest for the period of delay in case compensation is increased.

Main Case

The claimants are in appeal seeking enhancement of compensation on account of death of Vikas in a motor vehicular accident that took place on 20.05.2010.

The Tribunal has awarded compensation of Rs.6,50,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5000/-
2. Multiplier	16
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.6,40,000/-
5. Expenses on funeral	Rs.10,000/-

Counsel for the appellants has submitted that the deceased was earning Rs.20,000/- per month from agriculture and dairy farming. He was owner of jeep driven by him at the relevant time. Appropriate multiplier and deduction for personal expenses may be applied on the basis of materials on record. Claimants are entitled to increase in income for future prospects @ 40%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company would state that adequate compensation has been allowed by the Tribunal. It is further argued that as the deceased was more than 25 years, admissible multiplier should be 17.

The Tribunal has assessed income of the deceased at Rs.5000/- per month by treating him to be a skilled person on the basis of driving licence Ex.P5. Plea of the claimants is that he was earning Rs.20,000/- per month from agriculture and dairy farming. The claimants neither produced any document with regard to land owned or cultivated by the deceased nor with regard to his dairy business. They have also not produced registration certificate of the jeep driven by the deceased at the relevant time. However, matriculation certificate Ex.P3 has been produced. Taking into consideration that the deceased was a driver as well as matriculate when examined in the light of minimum wage available to a skilled worker at the relevant time, interest of justice would be served if income of the deceased is assessed at Rs.6000/- per month.

In the matriculation certificate Ex.P3, date of birth is recorded as 16.01.1985, meaning thereby deceased was 25 years and 4 months old at the time of death. Hon'ble the Supreme Court in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** has allowed multiplier of 18 for the age bracket 16 to 25 and 17 for 26 to 30. In the instant case, the deceased was less than 25 years and 6 months. The Apex Court has not dealt with as to how multiplier is to be applied if the deceased has completed 25 years but is less than 26 years. Taking a reasonable view from the fact that deceased was less than 25 years and 6 months old, appropriate multiplier in the circumstances would be 18 in place of 16.

The application for compensation was filed by the widow, two minor children and parents of deceased Vikas. Even if father of the deceased is not dependent upon his earning, admissible deduction for personal expenses would be $1/4^{th}$ in place of $1/3^{rd}$. Claimants shall be entitled to increase in income for future prospects @ 40%. In this manner, loss of dependency comes to Rs.13,60,800/- (Rs.6000 x 12 x 18) + (40% future prospects) – ($1/4^{th}$ deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270,** detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.14,30,800/- and the additional amount is Rs.7,80,800/- (14,30,800 – 6,50,000), payable with interest @7.5% per annum from the date of petition till realization except for the period of delay of 1485 days in filing the appeal. The additional amount shall be payable to minor children of the deceased in equal proportion, to be deposited in FDRs payable on their attaining age of majority or for a period of three years, whichever is later. The interest accruing on FDRs shall be payable to guardian of the minors for meeting expenses on their education and living.

The appeal is partly allowed in the aforesaid terms.

All other terms and conditions of the award shall remain intact.

22.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No